

Commonwealth of Massachusetts
Executive Office of Energy & Environmental Affairs

Department of Environmental Protection

Central Regional Office • 8 New Bond Street, Worcester MA 01606 • 508-792-7650

Maura T. Healey
Governor

Rebecca L. Tepper
Secretary

Kimberley Driscoll
Lieutenant Governor

Bonnie Heiple
Commissioner

December 8, 2023

Mark Purple
Town Administrator
17 Common Street
Southborough, MA 01772

RE: Town of Southborough – Farm Dump, Woodland and Breakneck Hill Roads
First Amendment to Administrative Consent Order and Notice of Noncompliance

Dear Mr. Purple:

Enclosed please find the executed First Amendment to Administrative Consent Order and Notice of Noncompliance. This executed document amends the Administrative Consent Order executed with the Town of Southborough on February 9, 2023.

Please note that the date the original Consent Order was signed/executed by MassDEP's Regional Director, February 9, 2023, is the effective date of the Order, and therefore the deadlines for all actions required in Section III. (DISPOSITION AND ORDER) contained in this Amendment will be calculated from that date.

If you have any questions concerning this First Amendment, please contact me at (508) 767-2767 as soon as possible.

Sincerely,

James A. McQuade
for *J. McQuade*

James A. McQuade
Section Chief
Solid Waste Management Program
Bureau of Air and Waste

12/8/23
Date

Enclosures: Executed Second Amendment to ACOP

This information is available in alternate format. Please contact Melixza Esenyie at 617-626-1282.

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**COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION**

In the matter of:
Town of Southborough

Enforcement Document Number:
00016636
Issuing Bureau: BAW
Issuing Region/Office: CERO
Issuing Program: SW
Primary Program Cited: SW
Suffix(es): AMEND1
FMF #: 626408

**FIRST AMENDMENT TO ADMINISTRATIVE CONSENT ORDER
AND NOTICE OF NONCOMPLIANCE
#00014618**

I. THE PARTIES

1. The Department of Environmental Protection (“Department” or “MassDEP”) is a duly constituted agency of the Commonwealth of Massachusetts established pursuant to M.G.L. c. 21A, § 7. MassDEP maintains its principal office at 100 Cambridge Street, Suite 900, Boston, Massachusetts 02114, and its Central Regional Office at 8 New Bond Street, Worcester, Massachusetts 01606.

2. The Town of Southborough (“Respondent”) is the owner of the real property located on Woodland and Breakneck Hill Roads in Southborough, Massachusetts, pursuant to a deed recorded on June 20, 1980, at the Worcester District Registry of Deeds in Book 6996, Page 313 (the “Property”). Respondent’s mailing address for purposes of this Consent Order is 17 Common Street, Southborough, Massachusetts 01772.

II. STATEMENT OF FACTS AND LAW

3. MassDEP is responsible for the implementation and enforcement of M.G.L. c. 111, §§ 150A and 150A½, the Solid Waste Management Regulations at 310 CMR 19.000, and the Site Assignment Regulations for Solid Waste Facilities at 310 CMR 16.00. MassDEP has authority under M.G.L. c. 21A, § 16 and the Administrative Penalty Regulations at 310 CMR 5.00 to assess civil administrative penalties to persons in noncompliance with the laws and regulations set forth above.

4. On February 9, 2023, MassDEP issued an Administrative Consent Order and Notice of Noncompliance, Enforcement Document Number: 00014618 (the “Consent Order”), to Respondent. The Consent Order became effective on February 9, 2023.

5. Paragraph 10.D.1. of the Consent Order requires Respondent to commence cleanup actions at the “farm dump” located on a portion of the Property referred to in the Consent Order as the “Site” within 180 calendar days of the date of MassDEP’s written approval of the cleanup

plan for the Site (“Cleanup Plan”) as required in Paragraph 10.C. of the Consent Order. Because MassDEP provided written approval of the Cleanup Plan to Respondent on May 31, 2023, paragraph 10.D.1. of the Consent Order requires Respondent to commence cleanup actions at the Site by November 27, 2023.

6. On October 25, 2023, Respondent’s attorney notified MassDEP’s attorney via email that Respondent was not going to be able to meet the 180 calendar day deadline of November 27, 2023, to commence cleanup actions at the Site due to the following reasons: the preparation of the bid documents for the cleanup actions at the Site took much longer to complete than expected; the bid documents would not be released until November 1, 2023; and responses to the bid documents would not be due until November 15, 2023. As a result, Respondent will likely be unable to execute a contract with the selected contractor—let alone commence cleanup actions—prior to November 27, 2023. For these reasons, and because the cleanup work is weather dependent and might not be able to be undertaken during the winter months, Respondent’s attorney requested that Paragraph 10.D.1. of the Consent Order be amended to extend the deadline for Respondent to commence cleanup actions at the Site to the spring of 2024. According to Respondent’s attorney, Respondent has already obtained all local and state approvals required for the cleanup, including but not limited to an Order of Conditions from the Southborough Conservation Commission and a Construction General Permit from the United States Environmental Protection Agency.

7. MassDEP recognizes the challenges associated with Respondent’s bid process and with commencing cleanup activities during the winter months, and it acknowledges Respondent’s efforts to obtain all local and state approvals required for the cleanup. MassDEP has therefore agreed to an amendment of the Consent Order.

III. DISPOSITION AND ORDER

For the reasons set forth above, MassDEP hereby orders, and Respondent hereby agrees to, this First Amendment to the Consent Order as follows:

8. Paragraph 10 of the Consent Order, subparagraph D.1., is hereby amended by replacing said paragraph, in its entirety, as follows:

1. No later than January 12, 2024, Respondent shall complete the selection and hiring of a contractor to conduct cleanup activities at the Site. No later than March 31, 2024, Respondent shall commence cleanup actions at the Site as detailed in the approved Cleanup Plan.

9. The parties have agreed to enter into this First Amendment to the Consent Order because they agree that it is in their own interests, and in the public interest, to proceed promptly with the actions called for herein rather than to expend additional time and resources litigating the matters set forth above. Respondent enters into this First Amendment to the Consent Order without admitting or denying the facts or allegations set forth herein. However, Respondent agrees not to

In the matter of: Town of Southborough
First Amendment to ACOP
Enforcement Document Number: 00016636

Page 3 of 3

contest such facts and allegations for purposes of the issuance or enforcement of this First Amendment to the Consent Order.

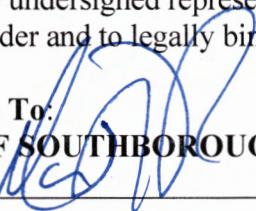
10. MassDEP's authority to issue this First Amendment to the Consent Order is conferred by the statutes and regulations cited in Part II of this First Amendment to the Consent Order.

11. This First Amendment to the Consent Order shall be incorporated into the Consent Order and is effective and enforceable pursuant to the terms of the Consent Order.

12. Except as explicitly revised by this Amendment, the terms and conditions of the Consent Order, including any previous amendments thereto, shall remain and continue in full force and effect.

13. This First Amendment to the Consent Order shall be deemed effective as of the date on which MassDEP signs this Amendment.

14. The undersigned represent that they have the authority to sign this First Amendment to the Consent Order and to legally bind the party on whose behalf they are signing.

Consented To:
TOWN OF SOUTHBOROUGH
By: 

Print Name: Michael Murphy

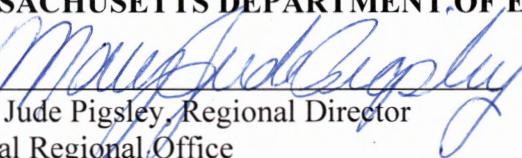
Title: Town Administrator

Address: 7 Common Street, Southborough, MA 01772

Federal Employer Identification No.: 046-001-305

Date: 11-27-2023

Issued By:
MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION

By: 
Mary Jude Pigsley, Regional Director
Central Regional Office
MassDEP
8 New Bond Street
Worcester, MA 01606

Date: 12/7/23